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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

ORDER

13 ALAN CURT SHUFELT, an individual,
14 Plaintiff,
15 vs.

CASE NO: 3:18-cv-00079-MMD-VPC

**PLAINTIFF'S
MOTION TO ENLARGE TIME TO
EFFECT SERVICE OF PROCESS ON
DEFENDANT HIGHTOWER**

(Second Request)

16 OWENS PRECISION, INC., a Domestic
Corporation; BRUCE HARMON, an
17 individual; AMANDA HIGHTOWER, an
individual,
18 Defendant.
19
20

21 COMES NOW Plaintiff ALAN CURT SHUFELT, by and through his counsel, William J.
22 Geddes, Esq. of the law firm THE GEDDES LAW FIRM, P.C. and Raelene K. Palmer, Esq. of the law
23 firm GALLIAN WELKER & BECKSTROM, L.C., and files *Plaintiff's Motion to Enlarge Time to*
24 *Effect Service of Process on Defendant Hightower (Second Request)* ("Motion") in the above-captioned
25 matter. This *Motion* is made pursuant to the following Points and Authorities, the pleadings and papers
26 on file in this action, the Declaration of *William J. Geddes* ("Declaration") attached hereto as **Exhibit**
27 **1**, and any oral arguments the Court may entertain at any hearing set for this matter. This is the second
28 request for such an enlargement of time, as to Defendant Hightower.

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1 **I. INTRODUCTION**

2 **A. CASE OVERVIEW**

3 This is an employment-discrimination case arising under the Americans with Disabilities Act.
4 For over seventeen years, Plaintiff Alan Curt Shufelt worked as a machinist at Owens Precision, Inc., a
5 manufacturing-services company located in Carson City, Nevada. During his tenure, from December
6 19, 1999 through February 3, 2017, Plaintiff was promoted to the position of lead machinist. Plaintiff
7 alleges herein that he suffered discrimination based on his disabilities, arising from workplace injuries
8 to his left shoulder and rotator cuff. Defendants refused to accommodate his disabilities, harassed him,
9 retaliated against him, failed to engage in the interactive process, and fired him. After Defendants fired
10 Plaintiff, their unlawful retaliation continued, when they wrongfully disparaged Plaintiff to third
11 parties, including prospective employers, stating that he was incompetent, that he was fired for non-
12 performance, and that he was not eligible for rehire because he filed many worker's compensation
13 claims. Plaintiff's supplemental, state-tort claims assert causes of action for: (1) tortious discharge in
14 violation of public policy—relating to Defendants' termination of Plaintiff in retaliation for Plaintiff
15 having sought worker's compensation benefits for his workplace injuries/disabilities; (2) invasion of
16 privacy—relating to Defendants' wrongful disclosure of private facts concerning Plaintiff's historical
17 filing of worker's-compensation claims, which implicates his private medical information and
18 disabilities, the confidentiality of which is protected under the ADA and other law; and (3) defamation.
19 Plaintiff seeks monetary, equitable, and injunctive relief.

20 **B. PROCEDURAL BACKGROUND**

21 On February 26, 2018, Shufelt filed his *First Amended Complaint* ("Complaint") in the above-
22 captioned matter. (ECF 004.) While Shufelt attempted service on all three defendants, he was initially
23 successful in serving only Defendant Owens Precision. (See ECF 007 (*Declaration of Service on*
24 *Defendant Owens Precision*)). Thus, Shufelt filed a motion for enlargement of time, through and
25 including July 22, 2018, to serve the remaining co-defendants, Bruce Harmon and Amanda Hightower.
26 (ECF 010.) That motion for enlargement was granted. (ECF 014). Initially, it was expected that
27 counsel for Defendant Owens Precision, Elizabeth Bittner, might also represent Defendants Harmon
28 and Hightower, if no conflict-of-interest in such joint representation arose. (See ECF 10-1, ¶ 7

(*Declaration of William Geddes in Support of Motion to Enlarge Time to Effect Service of Process on Defendants Harmon and Hightower*).) In this regard, Shufelt had hoped that Ms. Bittner would simply accept service of process for co-Defendants Harmon and Hightower. However, Ms. Bittner subsequently communicated that she was unable to jointly represent co-Defendants Owens Precision, Harmon, and Hightower, due to a possible conflict of interest in such a joint representation. (See **Exhibit 1**, at ¶¶ 1-5.)

Accordingly, Shufelt undertook to serve co-Defendants Harmon and Hightower at the last-known addresses supplied by Ms. Bittner. (**Exhibit 1**, ¶¶ 6-8.) Subsequently, on June 19, 2018, Shufelt timely served the summons and *Amended Complaint* on Defendant Harmon at his last-known address, within the extended time period allowed by the Court. (ECF 015 (*Notice of Summons Returned Executed on Defendant Bruce Harmon* with attached *Declaration of Service* for the same).) Shufelt also attempted, but failed, to effect service of process on Defendant Amanda Hightower at her last-known address, within the extended time period allowed by the Court. (ECF 016 (*Notice of Summons Returned Unexecuted on Defendant Amanda Hightower* with attached *Declaration of Service Attempts* for the same).) More specifically, such efforts attempted to effect service of process on Defendant Hightower seven times from June 19, 2018 to July 2, 2018, to no avail. (ECF 016-01.) Shufelt has now retained the services of a private investigator to attempt to track down Defendant Hightower's current address and to effect service of process on Defendant Hightower at that address. (**Exhibit 1**, at ¶ 9.) Based on the foregoing, Shufelt has diligently attempted to effect service on Defendant Hightower, but needs additional time to do so. (See **Exhibit 1**, at ¶ 10.) In this *Motion*, Shufelt respectfully requests an additional thirty (30) days to effect service of process of the Summons and *Amended Complaint* on Defendant Hightower, **through and including Tuesday August 21, 2018**.

II. LEGAL ARGUMENT

A. RULE 4(m) GOVERNS SERVICE OF PLEADINGS

Fed. R. Civ. P. 4(m) governs the time limit for service of pleadings and allows parties to obtain extensions of time to effect service of process beyond 90 days:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be

made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1) or to service of a notice under Rule 71.1(d)(3)(A).

Fed. R. Civ. P. 4(m).

B. RULE 6(b) ALLOWS PARTIES TO EXTEND DEADLINES

Separately, Fed. R. Civ. P. 6 (b) also permits parties to ask the Court to extend litigation deadlines: “if a request is made before the original time or its extension expires.” Fed. R. Civ. P. (b)(1)(A). However, if a motion to extend a litigation deadline is made *after* the deadline has expired, then the party show excusable neglect to extend the deadline. Fed. R. Civ. P. 6 (b)(1)(B).

Here, Shufelt requests an enlargement of time to effect service of process on Defendant Hightower *before* the extension period, allowed by the Court in ECF 014, has expired. Accordingly, the more lenient standard of “good cause” applies, not “excusable neglect.” *See* Fed. R. Civ. P. (b)(1)(A). Support for this lenient standard can also be found in Fed. R. Civ. P. 4(m), which allows *even post-deadline* requests for additional time to effect service of process on defendants to be granted for “good cause.” Fed. R. Civ. P. 4(m). Good cause and diligent efforts support Shufelt’s request here for additional time to effect service of process on Defendant Hightower, up to and including, Tuesday August 21, 2018.

C. GOOD CAUSE EXISTS TO EXTEND THE SERVICE-PERIOD

Plaintiff diligently attempted to effect service of process of Defendant Hightower, first at her place of employment, Owens Precision. However, the process server was advised that Defendant Hightower had been fired. Subsequently, Shufelt hoped to effect service of process on Defendant Hightower through counsel for Owens Precision, Inc., but a conflict-of-interest prevented joint representation by opposing counsel of Defendants Hightower and Owens Precision. Thus, Ms. Bittner was unable to accept service of process for Defendant Hightower. Thereafter, the process server retained by Shufelt attempted to effect service of process on Defendant Hightower, at her last-known address supplied by opposing counsel, seven times from June 19, 2018 to July 2, 2018, to no avail. (ECF 016-01.) Shufelt continues to exhibit due diligence in attempting to effect service of process on Defendant Hightower, by timely filing this *Motion* and retaining the services of a private investigator to

1 attempt to track down Defendant Hightower's current address and to effect service of process on
 2 Defendant Hightower at that address. Such efforts do not suggest that Shufelt has been neglectful in
 3 attempting service of process on Defendant Hightower, to date.

4 Yet even if anyone perceived such efforts to constitute neglect, any such arguable neglect would
 5 certainly be excusable neglect. A court's finding of "excusable neglect" can excuse not only the
 6 negligence, carelessness, and inadvertent mistake of a party, but also that of a party's counsel.
 7 *Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1220 and 1223 (9th Cir. 2000) (citing *Pioneer*
 8 *Investment Services Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 394 (1993).) In
 9 *Bateman*, the Ninth Circuit Court of appeals addressed the meaning of "excusable neglect," to clarify:

10 In *Briones*, 116 F.3d at 381, we noted that *Pioneer* changed our law on
 11 excusable neglect. Before *Pioneer*, we had held that "ignorance of court
 12 rules does not constitute excusable neglect" and had applied a *per se* rule
 13 against the granting of relief when a party failed to comply with a
 deadline. See *Briones*, 116 F.3d 381, 382. After *Pioneer*, however, we
 recognized that the term covers cases of negligence, carelessness and
 inadvertent mistake. See *id.* at 381.

14 *Bateman*, 213 F.3d at 1224 (citing *Pioneer*, 507 U.S. at 395).

15 The important judicial policy of adjudicating cases on their merits, rather than dismissing cases
 16 for failure to comply with procedural rules, can be gleaned from the case of *Mayweather v. Wine*
 17 *Bistro, LLC*, No. 2:13-cv-210-JAD-VCF (D. Nev. October 4, 2013). In *Mayweather*, the plaintiff had
 18 filed a motion to extend time to serve the pleadings on some of the defendants outside the 120-day
 19 service period, after having failed to attempt such service within the 120-day service period.
 20 *Mayweather*, No. 2:13-cv-210, at p. 11. With respect to the plaintiff's delay in attempting to serve one
 21 of the defendants, such attempts were not made until "two full months after the 120-day period ran."
 22 *Mayweather*, No. 2:13-cv-210, at p. 11. The *Mayweather* Court found that the plaintiff had failed to
 23 demonstrate good cause for extending the 120-day service period as to three of the defendants. *Id.*, at
 24 p. 12. Nevertheless, the district court still allowed the extension of time to serve the defendants, as
 25 requested, noting that, "Where no good cause is shown, the Court has discretion to extend the time
 26 period." *Mayweather*, No. 2:13-cv-210, at p. 12 (citing *U.S. v. 2,164 Watches More or Less Bearing a*
 27 *Registered Trademark of Guess?, Inc.*, 366 F.3d 767, 772 (9th Cir. 2004); and *Mann v. American*
 28 *Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003)).

1 Here, Shufelt submits that good cause or excusable neglect has been shown above, based on the
2 diligent service-attempt efforts described above. Moreover, there is no unfair prejudice to the
3 Defendants because the case is still in its beginning stages and Defendant Harmon has not yet appeared
4 in this case (see Docket). Thus, good cause exists to extend the deadline to effect service of process on
5 Defendant Hightower up to and including, Tuesday August 21, 2018.

6 **III. CONCLUSION**

7 FOR ALL THE FOREGOING REASONS, Plaintiff respectfully requests that the Court extend
8 the deadline to effect service of process on Defendant Hightower up to and including, Tuesday
9 August 21, 2018. This second request for such an enlargement of time for Defendant Hightower is
10 not offered for any dilatory or improper purpose.

11
12 Dated this 16th Day of July 2018.

THE GEDDES LAW FIRM, P.C.

13
14 

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21 *Attorneys for Plaintiff Alan Curt Shufelt*

22 **IT IS SO ORDERED**

23 
24 U.S. MAGISTRATE JUDGE


25 DATED: July 18, 2018
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Geddes Law Firm, P.C., and that on **July 16, 2018**, I caused to be served a copy of the foregoing *Plaintiff's Motion to Enlarge Time to Effect Service of Process on Defendant Hightower (Second Request)* by email and deposit in the U.S. Mail, first-class postage prepaid, addressed to:

Elizabeth M. Bittner, Esq.
Bittner Legal LLC
316 California Ave. #426
Reno, NV 89509
Tel (775) 720-9197
elizabeth@bittnerlegal.com

Attorneys for Defendants Owens Precision, Inc.


WILLIAM J. GEDDES
An employee of the Geddes Law
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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>
EX. 1	DECLARATION OF WILLIAM J. GEDDES

The Geddes Law Firm, P.C.
8600 Technology Way, Suite 107
Reno, NV 89521
Phone 775-453-9455

EXHIBIT 1

**Declaration of William J. Geddes In Support Of
Motion to Enlarge Time to Effect Service of Process on
Defendant Hightower (2nd Request)**

EXHIBIT 1

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Email: rpalmer@vegascase.com
10 Attorneys for Plaintiff Alan Curt Shufelt

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13 ALAN CURT SHUFELT, an individual,

14 Plaintiff,

15 vs.

16 OWENS PRECISION, INC., a Domestic
Corporation; BRUCE HARMON, an
17 individual; AMANDA HIGHTOWER, an
individual,

18 Defendant.
19
20

CASE NO: 3:18-cv-00079-MMD-VPC

DECLARATION OF WILLIAM GEDDES

In Support of

**PLAINTIFF'S
MOTION TO ENLARGE TIME TO
EFFECT SERVICE OF PROCESS ON
DEFENDANT HIGHTOWER
(Second Request)**

21 I, Declarant William J. Geddes, depose and state:

22 1. I am employed by the Geddes Law Firm, P.C., and in the course and scope of my duties
23 as an attorney, I am assigned to handle the above-captioned matter, representing the Plaintiff;

24 2. I have knowledge of the matters asserted herein and am competent to testify thereto,
25 save for those matters asserted on information and belief, and for those matters, I am informed and
26 believe them to be true;

27 3. I offer this Declaration in support of *Plaintiff's Motion to Enlarge Time to Effect*
28 *Service of Process on Defendant Hightower (Second Request)*;

1 4. On June 15, 2018, Ms. Elizabeth Bittner, counsel for Defendant Owens Precision, Inc.,
2 in the above-captioned matter communicated to me that she would not be jointly representing the co-
3 Defendants in this action, due to possible conflicts in interest in doing so;

4 5. Thus, she was unable to accept service of process for co-Defendants Harmon and
5 Hightower;

6 6. However, on June 18, 2018, to aid our office in effecting service of process on co-
7 Defendants Harmon and Hightower, Ms. Bittner provided us with the last-known addresses for these
8 co-Defendants, as follows:

9 a. Bruce Harmon, 534 Yellowjacket Road, Dayton, NV 89403; and

10 b. Amanda Hightower, 142 Denio Drive, Dayton, NV 89403;

11 7. Plaintiff subsequently effected service of co-Defendant Harmon at the last-known
12 address supplied by Ms. Bittner (*see* ECF 015);

13 8. However, Plaintiff was unsuccessful in his attempts to effect service of process on co-
14 Defendant Hightower at the address supplied by Ms. Bittner, 142 Denio Drive, Dayton, NV 89403,
15 which appears to be an invalid address for her (*see* ECF 016);

16 9. Subsequently, our office retained the services of a private investigator to locate the
17 current address of co-Defendant Hightower and to effect service of process on her at that address;

18 10. Based on the foregoing, and out of an abundance of caution, it is prudent to request
19 additional time to effect service of process on Defendant Hightower, for which the extended-service
20 deadline allowed by this Court will expire next week, on July 22, 2018; and

21 FURTHER DECLARANT SAYETH NAUGHT.

22
23 Pursuant to 28 U.S.C. § 1746, Declarant herein certifies, under penalty of perjury, that the foregoing is
24 true and correct.

25 Executed on this 16th day of July 2018.

26
27 

28 Declarant William J. Geddes